UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

AT TACOMA

| | | |
|---|---|---|
| REALNETWORKS, INC., a Washington corporation<br>Plaintiff,<br><br>v.<br><br>MLB ADVANCED MEDIA, L.P., a Delaware limited partnership<br>Defendant. | ) ) ) ) ) ) ) ) ) | Case No. CV-04-0511FDB<br><br>**DEFENDANT'S MOTION TO FILE CERTAIN DOCUMENTS UNDER SEAL** |

Pursuant to Federal Rule of Civil Procedure 5, Defendant MLB Advanced Media, L.P. ("MLBAM") respectfully moves this Court for permission to file its Answer to Complaint, Affirmative Defenses and Counterclaim (together with any attachments thereto) under seal. Filing these documents under seal is justified because the public's right of access is outweighed by the interests of the public and the parties in protecting the documents from public view.

Plaintiff RealNetworks, Inc. ("RealNetworks") filed a motion to file its Motion for Preliminary Injunction and related pleadings under seal. By order dated March 26, 2004 ("Order"), this Court granted RealNetworks' motion, "subject to the submission of an agreed proposed protective order by the parties within thirty days from the date of this order." Order at 1.

In addition to the Court's Order, the terms of the Streaming Media Services Agreement

**FOLEY & LARDNER LLP**
Attorneys at Law
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306
(414) 271-2400/Fax: (414) 297-4900

Dockets.Justia.com

between RealNetworks and MLBAM (the "2001 Agreement") impose an obligation on the parties "to communicate jointly and to coordinate statements regarding the MLBAM and RealNetworks relationship," and provide for confidential treatment of each party's confidential information.

In responding to RealNetworks' pleadings, certain information necessary to adequately respond to RealNetworks' pleadings may be deemed confidential and relate to confidential business information of the parties. The information contained in MLBAM's responsive pleading is necessary to fully and accurately present MLBAM's answer, defenses, and counterclaims against RealNetwork. The parties, however, may be adversely affected if such information is disclosed to the public or to competitors of the parties.

In light of the Court's Order, which also directs the parties to "submit a proposed protective order to the Court within thirty days from the date of this Order," MLBAM respectfully requests that its documents described above be filed under seal, subject to the submission of the proposed protective order.

A copy of the proposed order is filed with this motion.

DATED this 29th day of March, 2004.

Respectfully submitted,

FOLEY & LARDNER LLP

By ______________________________

Mary K. Braza
G. Michael Halfenger
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306
Phone: 414-271-2400
Facsimile: 414-297-4900

GRAHAM & DUNN PC

By ___________________________________
James L. MaGee
Laurene E. Somerville
Pier 70, 2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128
Phone: 206-624-8300
Facsimile: 206-340-9599

Attorneys for MLB Advanced Media, L.P.